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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

FRIENDS OF YOSEMITE VALLEY, et al.,
Plaintiffs,
v.
DIRK KEMPTHORNE, in his official
capacity as Secretary of the Interior, et al.,
Defendants.

Case No. CV-F-00-6191 AWI DLB

DEFENDANTS' PROPOSAL FOR
SCHEDULE TO COMPLETE A NEW
COMPREHENSIVE MANAGEMENT
PLAN FOR THE MERCED WILD AND
SCENIC RIVER

Pursuant to the Court's Order entered on November 3, 2006, the plaintiffs, Friends of Yosemite Valley, *et al.*, and the defendants, Dirk Kempthorne, Secretary of the Interior, *et al.*, filed their respective proposals regarding the schedule for the defendants to complete a new Comprehensive Management Plan for the Merced Wild and Scenic River pursuant to the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. §§ 1271-87. On January 9, 2007, the Court held a

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1 telephonic hearing with regard to those proposals and directed the parties to submit additional
2 information, along with a proposed order setting forth their positions regarding the schedule.

3 The parties have conferred but, at least as of today, have not been able to reach an
4 agreement regarding a stipulation for completion of the new plan. The defendants, therefore,
5 submit this proposal and a proposed order to set forth their position, with the understanding that
6 the plaintiffs will respond by January 19, 2007. If the parties are able to reach an agreement by
7 that date, they will submit a stipulation and proposed order.

8 The defendants request that the Court approve this schedule and enter the attached Order.
9 The terms of the defendants' proposal are as follows:

- 10 1. The defendant National Park Service (NPS) will prepare a new Merced Wild and Scenic
11 River Comprehensive Management Plan (CMP) pursuant to WSRA and a new
12 Environmental Impact Statement (EIS) pursuant to the National Environmental Policy
13 Act (NEPA), 42 U.S.C. §§ 4321, *et seq.*
- 14 2. Based on the description of the planning elements listed in the schedule attached as
15 Exhibit A, the estimated time required for the NPS to complete the new CMP and EIS is
16 approximately 33 months. The objective is to have an open and transparent public
17 process with ample opportunity for input from the public and various experts,
18 culminating in a new CMP and EIS that will comply with all applicable federal statutes
19 and applicable court orders.
- 20 3. The NPS hereby commits that it will conduct and implement each one of the 31 listed
21 elements (some of which already have begun) on Exhibit A, although the defendants
22 emphasize that the start dates, durations, and end dates for many of the elements listed on
23 the schedule are included as estimates only, not as binding deadlines, and some elements
24 may take either more or less time than estimated.

- 1 4. The NPS expects to commence the public scoping process under NEPA no later than
2 March 2007 and expects to complete the scoping process, including the consideration of
3 public comments, by May 2007 (element # 14). The NPS intends to commence preparing
4 the Draft EIS around July 2007 (element # 17).
- 5 5. Starting in the Summer of 2007, the NPS will conduct public workshops to address,
6 among other topics, the establishment of various management prescriptions and user
7 capacity management strategies that will protect and enhance the “outstandingly
8 remarkable values” (ORVs) for which the Merced River has been designated pursuant to
9 WSRA (elements ## 18, 19). The NPS will consider public comments provided through
10 the workshop process (element # 20).
- 11 6. The NPS plans to prepare and publish for public comment a draft set of preliminary
12 alternatives for use in the CMP and EIS and to refine the alternatives based on comments
13 received (elements ## 22, 24). Pursuant to NEPA and the Council on Environmental
14 Quality regulations, it will be incumbent on all persons – including the plaintiffs – to
15 provide detailed and specific comments regarding any alternatives that they believe
16 should be included in the draft CMP and EIS.
- 17 7. The NPS expects to publish and distribute for public comment a Draft CMP/EIS around
18 January 2009 (element # 25), followed by a public review and comment period of 60 days
19 (element # 26). Pursuant to NEPA and the Council on Environmental Quality
20 regulations, it will be incumbent on all persons – including the plaintiffs – to present
21 detailed and specific comments regarding the content of the draft CMP and EIS,
22 including comments on the alternatives and the environmental impact analyses that they
23 believe should be addressed in the final CMP and EIS.

8. Following the consideration and analysis of all public comments, the NPS expects to prepare a final CMP and EIS during the Summer of 2009 (elements ## 28-30).
9. The NPS expects to issue a Record of Decision to approve a new CMP and EIS no later than September 30, 2009. The NPS also will file a notice with the Court immediately upon approval of the Record of Decision.
10. To ensure the Court that the defendants continue to make adequate progress during the estimated 33-month development of the new CMP and EIS, the NPS will submit written progress reports to the Court on three occasions, in July 2007, February 2008, and January 2009 (elements ## 16, 23, 27). These reports will describe the nature of the work that has been performed and indicate whether the compliance schedule remains on track for timely completion by September 2009. These reports will provide the Court and the plaintiffs with updates regarding relevant developments and milestones in the schedule. If either party believes that a status conference with the Court would be helpful, that party is entitled to contact the Court and request a status conference, which may be held by telephone at the Court's convenience.
11. Although the planning schedule provided in Exhibit A is detailed, the only binding dates that are subject to the Court's order will be (a) the defendants' obligation to file the three progress reports listed in ¶ 10 and (b) the completion of the Record of Decision for the CMP by September 30, 2009, along with the prompt filing of a notice with the Court following approval of a Record of Decision for the new CMP and EIS (element # 31).
12. The defendants propose that the Court direct the plaintiffs to file a written response within 30 days following the notice regarding the Record of Decision to advise the Court whether they intend to challenge the new CMP and EIS and, if so, whether they seek injunctive relief to enjoin any actions that may be authorized by approval of the new plan.

13. The defendants present the attached proposed order with the express understanding that nothing in this notice or the proposed order will bind or restrict the defendants with regard to any legal position that may be advanced in connection with:

- (a) the appeal from the Court's July 19, 2006 and November 3, 2006 Orders, which the defendants filed on December 28, 2006;
- (b) any request for additional relief pertaining to the permanent injunction entered by the Court on November 3, 2006, or
- (c) the newly filed Complaint in Friends of Yosemite Valley v. Jarvis, No. 1:06-CV-01902-AWI-DLB (E.D.Cal. filed Dec. 28, 2006).

Specifically, by submitting this schedule and the proposed Order, the defendants do not concede the validity of the Court's prior Orders, nor do they waive the right to assert any and all legal and factual issues and claims that may be available to them in connection with the pending appeal.

For the reasons set forth in this notice of filing, the defendants request that the Court enter the attached order to set forth the schedule for the completion of a new CMP and EIS.

Respectfully submitted on January 16, 2007.

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